

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	EB Docket
No. 06-119		
Recommendations of the Independent Panel	)	
Reviewing the Impact of Hurricane Katrina on	)	[FCC
06-83 (NPRM)]		
Communications Networks	)	
	)	

Comments of Rickey L. Hampton (WD8KEL),  
or, in the alternative,  
Petition for Rulemaking submitted by Rickey L. Hampton (WD8KEL)  
on behalf of himself and Partners HealthCare System  
Filed: August 7, 2006 — VIA ECFS

In this proceeding, the Commission seeks comments on what actions the Commission can take to address the Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks.

While the Commission has already received many valuable submissions, these Comments address two vital measures FCC should address and act upon as soon as practical.

These recommendations are submitted in response to the Commissions' specific requests contained in paragraphs 9 and 10, page 4, Section III of the Commission's Notice of Proposed Rulemaking, EB No. 06-119, FCC 06-083 (NPRM) released June 19, 2006:

9. "...We seek comment... on other steps we can take within our jurisdiction and statutory authority to assist the public safety community response to disasters and other emergencies. ... Are there other areas where regulatory relief would be appropriate? ... We seek comment on whether additional safeguards should be implemented to address issues concerning potential disclosure of sensitive infrastructure information or commercial information to avoid potential harm to communications providers or others. Finally, we invite comment on other steps beyond those recommended by the panel that we could take within our statutory authority and jurisdiction to improve or strengthen network resiliency and reliability.

10. “We seek comment on whether and how the Commission can assist organizations whose primary business is not communications (*e.g.*, hospitals, nursing homes, day care facilities, and so forth) with developing communications plans for an emergency.”

Partners HealthCare System, Inc. (Partners) was founded in 1994 by Brigham and Women's Hospital and Massachusetts General Hospital. Partners is an integrated health care system that offers patients a continuum of coordinated high-quality care. The system includes primary care and specialty physicians, the two founding academic medical centers, community and specialty hospitals, home health and long-term care services, and community health centers. In addition to its patient care mission, Partners is one of the nation's premier biomedical research organizations and a major teaching affiliate of Harvard Medical School. Partners is a non-profit organization supported in part by charitable contributions.

In the instance of this document, we respond from the perspective of a hospital group to, “... the Commission's request for comment on whether and how the Commission can assist organizations whose primary business is not communications.” However, we also recognize other entities are also affected in a similar manner. Besides hospitals, these entities include police, fire, and EMS departments, state and local emergency operations centers, the Salvation Army, and the American Red Cross, to mention but a few.

Our first concern is the current Commission Rules prohibiting amateur operators acting as control operators of an amateur station where the operator may have a pecuniary interest. Sec. 97.113 states:

(a) “No amateur station shall transmit:

(2) “Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(3) “Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. ...”

We concur and support this prohibitive rule in general, as it prevents the undesired commercialization of amateur radio. However, the rule also has the unfortunate effect of removing from the list of available resources those amateurs who are employed by a hospital or other entity required to respond to disasters and emergencies. Worse, the rule prohibits the use of those amateurs at the time when they are needed most. In numerous internet postings and private emails, hospital personnel, emergency response officials, and amateurs across the nation have repeatedly indicated this rule

adversely affects the ability of their hospital, agency, or entity to respond in the timeliest fashion to a crisis.

Further, since these amateurs will in all likelihood be required to respond to the needs of their employing hospital during such a crisis, they cannot respond to assist other entities who are not their employers. This greatly magnifies the insult of the current rules; not only can a hospital not utilize those available operators most familiar with its operations and communications needs, the hospital must now compete with other entities for resources made more scarce by the decreased pool of available operators. In some cases, it may force first-responder agencies to make the painful decision to either request amateur operators unprepared for a specific field task, or forego vital communications. Either way, the health and safety of the public and the agency responders could be placed in jeopardy.

While it would seem obvious that Sections 97.401 through 97.407 provide relief in this matter during disasters and emergencies, the Commission's staff in the Enforcement Bureau has steadfastly interpreted this rule to the contrary. In previous communications received from them regarding the use of hospital employees during a disaster or emergency, they made it clear, "There is no exception in the rule for 'when availability of outside help is limited' or while other radio amateurs would be on their way to the hospitals." The final recommendation was to, "... have non-employees be control operators of the station."

The Commission's staff has a valid and respected point, in that hospitals and other entities can and do sign formal agreements with local amateur radio groups to provide communications during disasters and emergencies. We recognize that utilizing non-employees as control operators is desirable in that it does relieve hospital employees to perform their jobs which are often critical to treating the sick and injured. However, as pointed out by the Commission's own Independent Panel, disasters such as Hurricane Katrina may also affect the amateur radio community, either victimizing them directly or indirectly by making it difficult or impossible to travel in the affected area. As demonstrated by recent events, many disasters, such as earthquakes, tsunamis, hazardous materials incidents, and terrorist attacks often provide little or no warning, potentially exacerbating this problem. We wish to remind the Commission that, as Hurricane Katrina demonstrated all too well, support agreements with external entities are worthless until those entities can physically respond and, until that time, hospitals must rely upon their internal resources to ensure the public safety.

Finally, with respect to this matter, we feel the Commission should allow hospital employees to participate as control operators of amateur radio

stations during scheduled emergency tests and exercises. By allowing employees to participate alongside non-employees, we feel both groups will be better prepared to work together when a real disaster occurs. Further, since non-hospital employees may not be able to take time off from their normal jobs to participate in these tests and exercises, we feel the use of employees make it more likely that hospitals will be able to activate their amateur radio stations and provide meaningful training for all agencies involved.

For these reasons, we strongly urge the Commission to amend the current rules, in a manner similar to Section 97.113(c) such that employees of hospitals, as well as other agencies and entities as directed by the Commission, are permitted to serve as the control operator for their employers:

- 1) For brief, periodic testing of any installed equipment, such as antennas, transmission lines, and transceivers, if equipment is installed for use at the hospitals, to ensure its operational status and electrical safety;
- 2) During scheduled drills and other training exercises, and;
- 3) During actual disaster recovery and emergency operations when the use of amateur radio is required due to the compromise or potential compromise of normal communications systems.

Our second concern is in response to the Commissions request on, “whether additional safeguards should be implemented to address issues concerning potential disclosure of sensitive infrastructure information or commercial information to avoid potential harm to communications providers or others.” Specifically Section 97.113(a)(4) prohibits the transmission of “... messages in codes or ciphers intended to obscure the meaning thereof....”

As with the sections of Sec. 97.113 mentioned earlier, we agree with the intent of this rule. However, hospitals have in recent years come under the jurisdiction of several federal laws requiring them to prevent the disclosure of certain types of information. Chief among these laws are the Health Insurance Portability and Accountability Act (HIPAA). Among other things, HIPAA requires the protection of any Personal Health Information (PHI), to include encryption during transmission that can be used to identify a patient and their health status, history, and other personal information. For example, in case of a pandemic outbreak of disease, the simple act of confirming, via an unsecured communications circuit, the presence of a particular individual being treated for the disease could violate the HIPAA laws.

Our concern for hospitals and other healthcare entities in this instance is that in a disaster, such information may be required to properly diagnose and treat the patient. Should amateur radio, be required to transmit data critical to the patient's health, it must be protected from interception and tampering by unauthorized parties. Similarly, other agencies and entities responding to disasters, especially those resulting from terrorist activity, may require similar protection of their communications pertaining to preventive and logistical activities. As a result, the use of codes and ciphers intended to obscure the meaning of messages may be necessary under some circumstances to protect the public health.

While we do believe the need to use codes and ciphers in the manner described to be extremely rare, we do believe the possibility exists under certain circumstances. We also believe the Commission could address this possibility with a simple set of rules to prevent the unwarranted use of codes and ciphers as originally intended.

In addition to the existing rules permitting the use of codes and ciphers, we recommend the Commission permit their use to obscure the meaning of messages via amateur radio under the following conditions:

- 1) A disaster or state of emergency exists,
- 2) all normal and alternative communications methods in the disaster or emergency area are disrupted or unavailable, leaving amateur radio as the only viable method of communication,
- 3) the information to be transmitted is of such sensitive nature that federal law or the continued assurance of public safety requires its protection,
- 4) an executive of the served agency or entity formally requests the information be protected by codes or ciphers, and,
- 5) copies of the following shall be maintained by the served agency or entity, for a period not less than five (5) years, to be made available to the Commission upon request:
  - a. the plaintext message
  - b. the encrypted or encoded message
  - c. all methods, computer programs, algorithms, tables, etc. used in the construction of the encrypted or encoded message
  - d. a log indicating the name of the person requesting protection of the message, transmitting station, receiving station, time sent, and frequency used, and,

- e. a written account detailing the reason amateur radio was needed and used to send an encrypted or encoded message.
- 6) As soon as practical, a copy of the log and written account shall be sent to the Commission for review.

We believe this recommendation will allow the legitimate use of codes and ciphers by amateur stations, without creating a mechanism for their unwarranted use, while creating a method by which the Commission might audit their use.

Should the Commission for any reason find any of the preceding recommendations outside the scope of this proceeding, we respectfully request the Commission to act on it as a Petition for Rule making.

Respectfully submitted,

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